

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Darla Padgett, et al.,

NO. C 04-03946 JW

Plaintiffs,

**ORDER OVERRULING DEFENDANTS'
OBJECTION TO RECOMMENDED
DISCOVERY ORDER NO. 33**

v.

Brian Loventhal, et al.,

Defendants.

The parties have been working through a Special Master to complete discovery, and, in particular, to disclose to Plaintiffs certain documents found on Defendants' hard drives. The Special Master has the authority to resolve all discovery disputes and to establish a procedure for identification and disclosure of privileged documents for the Court's review. (See Order Appointing Tom Denver as Special Master, Docket Item No. 306.)

Presently before the Court is Defendants' Objection and Request for District Court to Reconsider Special Master's Discovery Order No. 33. (hereafter, "Objection," Docket Item No. 548.)

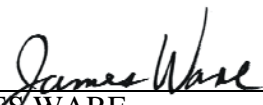
Defendants object to Discovery Order Number 33 on the ground that it requires Plaintiffs' expert to provide a privilege log to Plaintiffs that includes a "preview." The preview contains small portions of privileged documents that show a search term "hit" in context (i.e., a search term is shown along with a few of the words preceding and following it). (Discovery Order Number 33 at 2, Docket Item No. 543.) Defendants contend that the portion of the order requiring the preview

1 column should be overruled because it allows Plaintiffs to view the contents of Defendants'
2 privileged documents. (Objection at 2.)

3 In Discovery Order Number 33, the Special Master reviews and rules on each claim of
4 privilege set forth in the privilege logs prepared by Defendants. (Discovery Order Number 33 at 2.)
5 Only *after* the Special Master has reviewed the privilege logs, including the preview, are they
6 provided to Plaintiffs' expert. (Id.) Once Plaintiffs' expert has received the privilege logs and Bates
7 stamped the documents, he is allowed to provide Plaintiffs only with "all non-privileged
8 information." (Id.) In light of this procedure, the Special Master found that "[t]he 'preview'
9 column of the hit list does not compromise claims of privilege." (Id.)

10 The Court finds that the Special Master's ruling is not an abuse of discretion. Accordingly,
11 the Court OVERRULES Defendants' Objection to Discovery Order Number 33.

12
13 Dated: October 2, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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5 **Dated: October 2, 2008**

Richard W. Wieking, Clerk

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7 **By: /s/ JW Chambers**
8 **Elizabeth Garcia**
9 **Courtroom Deputy**
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